APPENDIX A.

(Trial Ex. 34.)

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, In and for the County of Ada.

Wm. H. Banks Warehouses, Inc., *Plaintiff*,
vs.
D. A. Stubblefield, Commissioner of Agriculture of the State of Idaho, *Defendant*.
} Civil No. 21,573.

MEMORANDUM DECISION.

The plaintiff corporation has petitioned this Court to issue a writ of mandate directed to the above named defendant to amend and correct warehouse licenses numbered 220 and 217, issued to petitioner under date of April 2, 1948, as of date of issuance of said licenses, by striking from said licenses the words "Jean Seed Company" and substituting therefor the words "William H. Banks Warehouses, Inc., warehouse" wherever the former term appears in said licenses, and to amend and correct all other licenses issued to said petitioner as of the date of issuance of said licenses, in the same manner.

The facts as disclosed by the evidence, in brief, are as follows: The plaintiff is an Illinois corporation with its

principal place of business in Chicago, and is authorized to do business in Idaho. It is engaged in business as a field warehouse, as outlined in detail in Exhibit 12 and in paragraph III of the petition. Under its method of operation petitioner leases the field warehouse from a prospective customer and places in charge thereof a custodian who takes possession of goods and merchandise deposited by the customer. Petitioner then issues warehouse receipts at its office in Chicago to whatever banks or other lending institutions the customer may designate. These banks then hold the warehouse receipts as collateral security for loans of such customer. The merchandise covered by the warehouse receipts so held is not released until the warehouse receipts are paid off.

It is alleged and admitted that petitioner at no time purports to operate a warehouse for the use of the general public, but operates its field warehouse only for each of its individual customers, as part of the security transactions described in the complaint.

The Idaho Department of Agriculture assigns to each warehouse licensed a serial number, which State number applies only to that warehouse so long as it is licensed, and without regard to changes in ownership or lease. The license forms printed and used, after naming the applicant, then designate the warehouse to be used, giving general location of same and the State warehouse number. The warehouse license is issued for a fiscal year running from July 1st to the following June 30th.

Petitioner entered the state in 1946, and procured license number 46 to operate State warehouse number 537 described as "Jean Seed Co. warehouse" at Filer (Exhibit 9). On June 24, 1947, petitioner applied for a license for the succeeding year to continue operation of State warehouse number 537 (Exhibit 6). On August 12, 1947, peti-

tioner applied for a license to operate a warehouse on certain leased premises at Rupert, Idaho, designated State warehouse number 576, which was a warehouse also leased from the Jean Seed Company (Exhibit 4).

For some reason not explained by the evidence, the June 24, 1947, application (Exhibit 6) was not acted upon through issuance of a license until April 2, 1948, when State license number 220 (Exhibit 7) was issued to petitioner, reciting in part as follows:

> "William H. Banks Warehouses, Inc. of Chicago, Illinois, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean warehouses thereunder to conduct the Jean Seed Company located in Filer, County of Twin Falls, Idaho, from July 1, 1947, to June 30, 1948 * * *."

The August 12, 1947, application (Exhibit 4) was not acted upon until April 2, 1948, when State license number 217 (Exhibit 5) was issued to petitioner, reading in part as follows:

> "William H. Banks, Warehouses, Inc. of Chicago, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean and seed warehouses thereunder to conduct the Jean Seed Company located in Rupert, County of Minidoka, Idaho, from July 1, 1947, to June 30, 1948 * * *."

On June 25, 1948, verbal demand was made upon the Commissioner of Agriculture to correct certain licenses (Exhibits 5 and 7) as of April 2, 1948, so as to eliminate therefrom the words "Jean Seed Company" and substitute therefor the words "William H. Banks Warehouses, Inc. warehouse." The verbal demand was verified by a letter of June 28, 1948 (Exhibit 10), addressed to the Commissioner of Agriculture. On July 13, 1948, the Commissioner of Agriculture by letter (Exhibit 11) refused to correct the alleged error unless "the Department be di-

rected to make a change by a court of competent jurisdiction."

This action was filed July 20, 1948, and on the same day an alternative writ of mandate issued out of this court. An answer and return to the alternative writ of mandate was filed herein on December 5, 1949, with a supplemental answer and return later filed on January 10, 1950. The matter came on for hearing on January 26, 1950.

As written, the wording of neither license number 220 nor license number 217 makes sense. Each license by express wording is a "warehouse license" and by no stretch of the imagination could be considered a general business license. Nor was the department ever authorized to issue general business licenses.

The departmental employees knew that the "Jean Seed Company" was the fictitious name and business designation under which "W. Andrew Jean" operated. A reference to the files would have shown, in case of doubt, that the warehouse license number 46 (State 537) issued by the Department under date of September 27, 1946 (Exhibit 9) was issued to petitioner "to conduct the Jean Seed Co. warehouse."

We have, then, two warehouse licenses erroneously worded and erroneously issued where the patent errors are refused correction by the defendant Department upon the advice and direction of the State Attorney General (the initials of the Attorney General appear in the dictation reference to the letter of June 13, 1948 (Exhibit 11). Defendant then seeks to justify the refusal of correction upon two grounds:

> 1. That the wording followed the direction of Rex G. Branch, an employee of petitioner, as given in a conversation with the office secretary some time in October, 1947, or more than six months before the date of the licenses in controversy.

2. That to correct the errors would affect rights and interests of persons not parties to this proceeding.

The first contention is neither plausible nor persuasive. Mr. Branch expressly denied giving any such direction as to the data on the license, and the defendant's evidence conclusively showed that he had no authority in connection with the application, issuance, or handling of such licenses for petitioner. It is not plausible that an oral direction given to the office secretary more than six months before the date of issuance of the licenses would justify a departure from the custom, practice, and procedure of the department in the issuance of such licenses without some formal notation therefor appearing in the departmental records.

The second contention is also entirely without merit. This question is purely one between the petitioner and the defendant Department of Agriculture over such errors in the issuance of petitioner's warehouse licenses. The errors should have been corrected without putting petitioner to the costs and expenses of this suit.

Just how third parties can have a vested legal right in these errors, to prevent their correction, is beyond the imagination of this Court. If in the conduct of these warehouses petitioner became involved with third parties over transactions occurring there, the right of recovery of such parties could hardly be dependent upon a State stenographer's error in filling out blanks in the license under which the petitioner was operating.

It is my opinion that the writ should be made permanent. Counsel for plaintiff may prepare, serve, and submit findings of fact, conclusions of law, and judgment in accordance herewith.

Dated this 3rd day of March, 1950.

CHARLES E. WINSTEAD,
District Judge.

(Trial Ex. 32.)

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO,

In and for the County of Ada.

William H. Banks Warehouses, Inc. *Petitioner,* *vs.* D. A. Stubblefield, Commissioner of Agriculture of the State of Idaho, *Respondent.*	Civil No. 21,573.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The petition of Petitioner for a writ of mandate herein came on regularly to be heard, and an alternative writ of mandate having heretofore issued and Respondent having filed his return and amended and supplemental return, Petitioner appearing by J. L. Eberle and L. Duncan Lloyd as counsel, and Respondent appearing by Robert E. Smylie, Esquire, as counsel, and oral and documentary evidence having been introduced on behalf of the respective parties and thereafter said cause was argued and written briefs submitted by counsel, and the Court being fully advised in the premises, does hereby render its decision and finds the facts and makes conclusion of law as follows, to wit:

FINDINGS OF FACT.

1. Petitioner, William H. Banks Warehouses, Inc., is and was a corporation duly organized and existing under

the laws of the State of Illinois, with its principal place of business at 209 South La Salle Street, Chicago, County of Cook, Illinois, and is duly authorized to do business in the State of Idaho.

2. Respondent, D. A. Stubblefield, was and is the duly appointed and acting Commissioner of Agriculture of the State of Idaho and is charged with the administration of the Idaho Bonded Warehouse Law, Chapter 67, Section 2 of the Idaho Code Annotated, Sections 67-201 to 67-235 inclusive.

3. Petitioner is engaged in business as a field warehouseman in the State of Idaho and elsewhere in the United States. Field warehousing as practiced by petitioner is essentially a security transaction designed to permit petitioner's customers to obtain loans from banks or other lending institutions and to use as collateral security for said loans, warehouse receipts issued by petitioner on the customer's inventory as hereinafter described. Petitioner's standard method of operation is as follows: When a potential customer desires to obtain loans on his inventory, petitioner enters into a contract with said customer under the terms of which petitioner leases premises from said customer and establishes a field warehouse on the premises so leased. A copy of the form used for such contract is attached to Petitioner's petition marked Exhibit A and made a part thereof. The field warehouse so established is completely enclosed, locked with petitioner's locks and posted with petitioner's signs. Petitioner also appoints a custodian as its own employee for each such warehouse. After said field warehouse is established, said customer may from time to time deposit his goods in said field warehouse and apply to petitioner to issue warehouse receipts on the merchandise so deposited. Said goods so received in petitioner's field warehouse is properly segregated into

separate lots and each lot is assigned a number and is tagged with such number. Upon such application, duly certified by said customer and by petitioner's duly appointed warehouse custodian, petitioner then issues warehouse receipts at its office in Chicago, Illinois to whatever banks or other lending institutions said customer may designate. Said banks or other lending institutions hold said warehouse receipts as collateral security for loans made to petitioner's customer. As such loans are paid off, said banks or other holders of warehouse receipts authorize petitioner to release the merchandise held in its field warehouse and covered by said warehouse receipts. Petitioner at no time purports to operate a warehouse for the use of the general public but operates its field warehouses only for each of its individual customers as part of the security transactions hereinbefore described.

4. On or about August 29, 1946, petitioner inquired of Mr. George Hersley, then the duly appointed and acting Commissioner of Agriculture of the State of Idaho, as to whether it would be required to comply with the Idaho Bonded Warehouse Law in connection with its field warehousing operations where said operations involved the storage of agricultural produce. At said time petitioner fully explained to said Commissioner of Agriculture the nature of petitioner's business as a field warehouseman and gave to said Commissioner of Agriculture pamphlets and other information fully describing the nature of said business. Said Commissioner of Agriculture ordered petitioner to comply with the Idaho Bonded Warehouse Law in all instances where petitioner was engaged in the field warehousing of agricultural produce.

5. Petitioner applied to said then Commissioner of Agriculture for licenses to operate several field warehouses during the year 1946 and said licenses were granted. Said

licenses contained only the name of petitioner as licensee and did not contain the name of any other person, firm or corporation, and were in accordance with the terms of the applications filed for said licenses by petitioner.

6. On or about June 24, 1947, petitioner applied to the Commissioner of Agriculture of the State of Idaho for a license to operate a warehouse on certain leased premises located in Filer, Idaho. A copy of said application is attached to petitioner's petition, marked Exhibit B, and made a part thereof.

7. On or about August 12, 1947, petitioner applied to the Commissioner of Agriculture of the State of Idaho for a license to operate a warehouse on certain leased premises located in Rupert, Idaho. A copy of said application is attached to Petitioner's petition, marked Exhibit C, and made a part thereof.

8. Pursuant to said application of June 24, 1947, the Commissioner of Agriculture, on April 2, 1948, issued Warehouse License No. 220 to petitioner. Said license read in part as follows:

> "William H. Banks Warehouses, Inc. of Chicago, Illinois, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean warehouses thereunder to conduct the Jean Seed Company located in Filer, County of Twin Falls, Idaho, from July 1, 1947 to June 30, 1948 * * *"

The insertion of the words "Jean Seed Company" in said license was an error on the part of said Commissioner of Agriculture because said Jean Seed Company was not mentioned in said application and the application was made by petitioner on its own behalf and the application showed that petitioner alone was applying for a license to operate a warehouse. A copy of said license is attached to petitioner's petition, marked Exhibit D, and made a part thereof.

9. Pursuant to said application of August 12, 1947, the Commissioner of Agriculture, on April 2, 1948, issued Warehouse License No. 217 to petitioner. Said license read in part as follows:

> "William H. Banks Warehouses, Inc., of Chicago, Illinois, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean and seed warehouses thereunder to conduct the Jean Seed Company located in Rupert, County of Minidoka, Idaho from July 1, 1947 to June 30, 1948 * * *"

The insertion of the words "Jean Seed Company" in said license was an error on the part of said Commissioner of Agriculture because said Jean Seed Company was not mentioned in said application and the application was made by petitioner on its own behalf and the application showed that petitioner alone was applying for a license to operate a warehouse. A copy of said license is attached to petitioner's petition and marked Exhibit E, and made a part thereof.

10. Warehouse licenses issued by said Commissioner of Agriculture to other field warehouse companies operating in the State of Idaho generally contain no names of any persons, firms, or corporations except the names of said field warehouse companies themselves.

11. On June 25, 1948, verbal demand was made upon the Commissioner of Agriculture to amend and correct said warehouse licenses described in paragraphs 8 and 9 of this petition as of April 2, 1948, so as to eliminate therefrom the words "Jean Seed Company" and substitute therefore the words "William H. Banks Warehouses, Inc. warehouse," and to amend and correct other licenses issued to petitioner in the same manner. Said verbal demand was verified by letter of June 28, 1948, addressed to said Commissioner of Agriculture, copy of which is attached

to petitioner's petition marked Exhibit F, and made a part thereof.

12. Said Commissioner of Agriculture on or about July 13, 1948, refused to amend and correct said licenses described in paragraphs 8 and 9 of said petition in accordance with said demand and confirmed said refusal in a letter dated July 13, 1948, copy of which is attached to petitioner's petition, marked Exhibit C, and made a part of the petition; it being stated in such letter that the Commissioner refused to correct the alleged error unless the Department be directed to make a change by a court of competent jurisdiction.

13. By reason of the erroneous inclusion of the words "Jean Seed Company" or other similar words in said warehouse licenses, persons who deal with said Jean Seed Company or other person, firm, or corporation so named in said warehouse licenses, may possibly be induced to believe that said Jean Seed Company, or such other person, firm, or corporation, is in some manner an agent of the petitioner, or that the petitioner is in some manner operating a warehouse of said Jean Seed Company, or such other person, firm, or corporation, when, in fact, petitioner has only undertaken to operate its own field warehouse on premises leased from the said Jean Seed Company in Filer, Idaho, or on premises leased from such other person, firm, or corporation named in said warehouse licenses wherever located; and certain persons, firms, and corporations have made such claims against petitioner involving warehouse licenses issued to petitioner to operate said field warehouses in Filer and Rupert, Idaho, and said claims have given rise to litigation in the case entitled "William H. Banks Warehouses, Inc. and John Alfred Halford *vs.* W. Andrew Jean, doing business as Jean Seed Co., *et al.,*" now pending in the

District Court of the United States for the District of Idaho, Southern Division, Case No. 2587; and also in the case entitled: "George L. Watt and Bill Watt; J. M. Jamerson; Harold B. Malone and Olga Malone, husband and wife; D. C. Pierce; Fred R. Mathers; Elmer C. Cloninger; Edward E. Babcock; Hypotheek Land Company, a corporation; and E. Viola Faizell *vs.* William H. Banks Warehouses, Inc., a corporation, and Underwriters at Lloyd's (London), an unincorporated association," both of which cases are pending in the United States District Court for the District of Idaho, and have been consolidated for trial.

14. That respondent knew that "Jean Seed Company" was the fictitious name and business designation under which "W. Andrew Jean" operated; that said licenses were erroneously worded and the use of the words "Jean Seed Company" was a patent error; that when respondent discovered such errors it objected to the same within a reasonable time.

15. That the erroneous use of the words "Jean Seed Company" as a designation of the name of the warehouse in said licenses was not in accordance with any instructions by respondent, nor in accordance with the custom of respondent or the Department of Agriculture.

16. That the parties interested in the correction of said errors are before the Court and no other person has acquired any interest in such errors or the right to object to the correction thereof.

Conclusions of Law.

As conclusions of law, the Court holds and decides:

1. That in the licenses numbered 220 and 217, hereinbefore mentioned, the words "Jean Seed Company" were erroneously used in lieu of the words "William H. Banks

Warehouses, Inc. Warehouse" and petitioner is entitled to have such error corrected by the issuance of amended licenses.

2. That petitioner is entitled to a judgment requiring respondent to correct and amend said warehouse licenses numbered 220 and 217, issued to petitioner under date of April 2, 1948, as of the date of issuance of said licenses, by striking therefrom the words "Jean Seed Company" and substituting the words "William H. Banks Warehouses, Inc., Warehouse" wherever the form appears in said licenses, and that the Clerk issue a peremptory writ of mandate accordingly; and petitioner be entitled to recover its cost incurred herein.

Let decree be entered accordingly.

March ....., 1950.

.....

District Judge.

(Trial Ex. 33.)

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO,

In and For the County of Ada.

William H. Banks Warehouses, Inc., *Petitioner,* *vs.* D. A. Stubblefield, Commissioner of Agriculture of the State of Idaho, *Respondent.*	Civil No. 21,573.

JUDGMENT.

This cause came on regularly to be heard, and alternative writ of mandate having issued herein and respondent having filed his return and amended and supplemental return, J. L. Eberle and L. Duncan Lloyd appearing for petitioner, and Robert E. Smylie, Esquire, for respondent, and the Court having heard the testimony and having examined the proofs offered by the respective parties and after briefs being filed and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law, and having directed that judgment and a peremptory writ of mandate should issue in the premises, NOW, THEREFORE, by reason of the law and findings aforesaid:

IT IS HEREBY ORDERED, ADJUDGED and DECREED, that a peremptory writ of mandate in due course of law issue, requiring respondent, D. A. Stubblefield, Commissioner of

Agriculture of the State of Idaho, to correct and amend warehouse license No. 220 and warehouse license No. 217, issued to petitioner under date of April 2, 1948 as of the date of issuance of said licenses, by striking from said licenses the words "Jean Seed Company" and substituting therefor the words "William H. Banks Warehouses, Inc., Warehouse" wherever the former words appear in said licenses, by the issuance of amended licenses bearing date April 2, 1948, showing such correction.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that said writ be issued by the Clerk of this Court under its seal and that respondent make known to this Court on March 8, 1950, at 2:00 o'clock P.M., on said date, how he has executed this writ, and to have with him, then and there, this writ; and it is further ORDERED that petitioner recover its costs and disbursements incurred herein, taxed at $.....

Done in open Court this 7th day of March, 1950.

.....

District Judge.

APPENDIX B.

(Trial Exhibit 1.)

Contract for Services.

WILLIAM H. BANKS WAREHOUSES, INC.

Offices, Chicago, Ill.

THIS AGREEMENT, made and entered into this 21st day of September, A. D. 1946, by and between W. Andrew Jean, an individual, d/b/a Jean Seed Company, of Filer, Idaho, existing under laws of the State of Idaho hereinafter called the "Owner" and William H. Banks Warehouses, Inc., a Corporation organized and existing under laws of the State of Illinois, and duly licensed to do business in the State of Idaho, hereinafter called the "Warehouseman" WITNESSETH:

WHEREAS, the Owner will, by a certain indenture, or indentures, of even date herewith, or of subsequent date hereto, lease to said William H. Banks Warehouses, Inc., all of its right, title and interest in and to certain premises theretofore possessed by it as owner or lessee, and more particularly described in said indenture, or indentures, of lease; and,

WHEREAS, the Owner agrees to permit the Warehouseman to maintain a Warehouse upon the said premies so leased to the Warehouseman, as above set forth and to issue its Warehouse Receipts covering such property as the Warehouseman shall receive for storage on said Warehouse premises;

NOW, THEREFORE, in consideration of the covenants and agreements herein mentioned and contained, to be kept and performed by the Owner, and its assigns, the Ware-

houseman (having taken possession of said premises) agrees to receive in store and issue against such property so received, Warehouse Receipts upon the following terms and conditions, namely:

1. The Warehouseman takes and holds possession of said premises under the lease, or leases, above mentioned so long as it shall have in its possession any property stored on said premises, and for which warehouse receipts may be outstanding.

2. The Owner warrants said premises to be suitable for the purposes for which it is intended they are to be used, and hereby undertakes, at its own expense, to keep said premises in good repair and in suitable condition (in the judgment of the Warehouseman) at all times during the term of the lease, or leases, for the purposes aforesaid, and also hereby undertakes and covenants to indemnify and at all times to keep the Warehouseman indemnified and to hold and save it harmless from and against any and all losses, costs and expenses, of whatsoever kind or nature, including attorneys' fees, which the Warehouseman may sustain, should said premises prove other than suitable, safe and proper; the Owner further warrants, covenants and agrees to and by these presents does indemnify and save the Warehouseman harmless from and against any and all loss, obligation, damage or liability, including costs and attorneys' fees, which may result from the injury, or alleged injury to any person, persons or property, or from the death of any person or persons upon the leased premises above referred to, and/or in connection with the performance of the terms of this contract, whether such person shall be an officer or an employe of the Owner, or of the Warehouseman, or any other person, and regardless of who shall be the Owner of such property.

3. No provisions of this agreement shall constitute a

waiver of any lien to which the Warehouseman is entitled by law.

4. In case the Owner fails to keep said premises in good repair, as provided in Article "2" above, the Warehouseman is hereby authorized to forthwith repair the same, and the expenses thereof shall be an additional charge against the property stored.

5. The Warehouseman may at any time it sees fit, decline to receive any further goods in or upon said premises, or issue any further warehouse receipts therefor, without thereby cancelling the indenture, or indentures, of lease hereinbefore referred to.

6. Should the Owner at any time, or in any manner, break any of the terms or conditions of this contract; or should the Owner become insolvent, or should the Owner in any manner interfere with, or make difficult, the duties of the Warehouseman's agents, custodians, servants, or employes; or remove, or permit to be removed, any locks, or other fastenings, or protection for safety, or notice, or any signs, tags, or other marks; or should the premises hereby let, or leased, become involved in any manner in litigation; or should the Owner, or the Warehouseman, be ejected or ousted from the possession of the premises, or should proceedings be begun for the purpose; or should the Warehouseman at any time deem it necessary, for the protection of its interests and the property stored, then the Warehouseman shall have the right, without notice, to remove all property so stored from said premises to such other place, or places, as the Warehouseman may deem proper or expedient, and adequately insure same. And, in case of any such removal, the Owner undertakes and agrees to pay to the Warehouseman all costs and expenses of said removal, together with the expenses and charges of storing and insuring said property elsewhere, until return and surrender of all outstanding warehouse receipts properly endorsed.

7. The Owner shall pay to the Warehouseman, as compensation for its services, storage of property and issuing of Warehouse Receipts therefor, on the following basis:

(a) For all property stored on premises, or parts of same leased of Owner, or others in its behalf, and located at or on premises of, or in possession of, the Owner at Filer, Idaho or elsewhere, and specified, or by custom or implication embraced by application or request for warehouse receipts, the charges for the first Fifteen Thousand Dollars ($15,000.00) Dollars, or less, of Loan Value, per month, or fraction, shall be Thirty Five Dollars ($35.00) Dollars. For all property stored, on which Loan Value, is in excess of $15,000.00, the rate, or charge per month, or fraction, shall be as follows:

On amounts up to and including $100,000.00 . $1.00 per thousand dollars;
On amounts over 100,000.00, up to and including $200,000.00 . $ .90 per thousand dollars;
On amounts over $200,000.00, up to and including $300,000.00 . $ .80 per thousand dollars;
On amounts over $300,000.00, up to and including $400,000.00 . $ .70 per thousand dollars;
On amounts over $400,000.00, up to and including $500,000.00 . $ .60 per thousand dollars;
On amounts over $500,000.00 ..... $ .50 per thousand dollars.

It being understood and agreed that the minimum net earnings under this agreement shall be not less than $35.00 per month, during such time as warehouse receipts are outstanding.

(b) The above schedule includes all anticipated charges, with the exception of fees for services of Custodian, or Transfer Agent. Additional charges, not anticipated, incident to the business conducted

under this agreement, and all other outlays or charges which, in the judgment of the Warehouseman, may become necessary in the protection of the merchandise, may be added to the rates and amounts above specified.

(c) It is understood and agreed that all accrued charges shall be due and payable on or before the fifth day of each month following earnings or outlays of same in the conduct of the business.

8. It is hereby agreed that this contract for services shall remain in full force and effect for the term of one year from and after the date hereof and thereafter shall automatically be renewed each year on the 21st day of September, unless cancelled by thirty days' previous written notice by either party hereto to the other. It is agreed, however, that this contract may not be cancelled until surrender of all outstanding warehouse receipts issued on property stored in the leased premises abovementioned, the payment of all charges accrued thereon, and after orders to release property held under warehouse receipts are issued, signed by party authorized to receive the goods and delivered to the Warehouseman.

9. Settlements between the parties hereto shall be made as noted in Article "7" and the amounts due the Warehouseman shall be promptly paid by the Owner in lawful money of the United States at the office of the Warehouseman, so long as this contract shall continue in force.

10. Upon termination of this contract, this document and all other papers which form the basis of conduct of the business hereunder shall simultaneously be surrendered to the Warehouseman.

IN WITNESS WHEREOF, we have hereunto set our hands and seals as of this 21st day of September, A. D. 1946.

JEAN SEED COMPANY,
By (Signed) W. ANDREW JEAN,
Owner,
WILLIAM H. BANKS WAREHOUSE, INC.,
By (Signed) P. H. CARIS,
President.

(SEAL)

WITNESS:

(Signed) REX B. BRANCH.

ATTEST:

(Signed) I. H. KESSLER,
Secretary.

APPENDIX C.

Business forms used by W. Andrew Jean, doing business as "Jean Seed Company."

(From Trial Ex. 109.)

"SCALE TICKET"

WEIGHED ON STANDARD SCALES.

No. 40 9-24, 1947
Load of Pintos
From Fred Mathers
To Jean Seed Co.

Driver on x — Gross 8810 lbs.
Driver off——— Tare 4880 lbs.
Free——— Net 3930 lbs.
HWM Weigher. Net——— Bush.

Legal Weights lbs. per bu.	
Alfalfa	60
Apples	48
Barley	48
Bran	20
Beans	60
Buckwheat	52
Clover Seed	60
Corn on cob	70
Corn shelled	56
Flax Seed	56
Hemp Seed	44
Millet Seed	50
Oats	32
Onions	57
Peas	60
Potatoes, Irish	60
Rye	56
Timothy	45
Wheat	60

(From Trial Ex. 101.)

"SCALE TICKET"

WEIGHED ON TYPE REGISTERING BEAM SCALE.

No. .....

Load Small Reds — Date 10-8 1947

From Chas. Zach

Gross 4300 lbs. — To Jean Seed Co.
Tare 5630 lbs. — Test..... .... Hauler.....
Net 8670 lbs. — Price.... Amt..... $..... On..... Off.....
Bu. 77 — R. W. T. Weigher

(From Trial Ex. 101.)

"MEMORANDUM OR WHIZ TICKET"

Contractor & Processor Seed Peas & Beans

JEAN SEED CO.

W. Andrew Jean

P. O. Box 122 Filer, Idaho

..... Phone 47 .....

M Charles Zach

Address .....

X Rec'd.	Mill	H.P.	Del'd.	Chg.	Cash	Miscel.

Quan.	Description	Price	Amount
77	Red Beans	wt.	86.70

All claims for returned goods must be accompanied by this bill

2958 Rec'd by RBA

(From Trial Ex. 101.)

"CROP SETTLEMENT AND STATEMENT"*

JEAN SEED COMPANY

Crop Settlement

Lot No. .....
Crop Beans Variety Small Reds Stock Letter.....
Name of Grower Chas. Zach Date 4-30-48
Address Filer, Idaho Agent.....

Credits—	Bags No. & Kind With Seed	Weight Loss Milling Hand Picking	Weight	Contract Price	Net Amount
Net Wt. Received—Rec. No.	304		33 831		
Less: Wt. Loss—Milling					
Less: Wt. Loss—Hand Picking					
Net Wt.—Hand Picked Seed			29 845	10 00	2984 50
Misc. Items Due Grower—		3458 lbs. culls @ 1.00			34 58
Total Amount Due For Crop					3019 08

		Amount	
Deductions—			
Threshing bill	1½#twine @ 1.50	2 25	
	Total Debits	2 25	2 25

Net Amount Due Grower.... Payment.... Draft.... Check.... No..... 3016 83

Remarks:—.....

Jean Seed Company
Rupert and Filer, Idaho
Per W. Andrew Jean

* Extraneous items on printed form not pertinent to this exhibit is not included in this copy.

APPENDIX D.

Idaho Bonded Warehouse Law.

(As in force in 1946-1948. References are to Idaho Code, 1932).

Sec. 67-201. Short Title of Act. This act shall be known by the short title of Bonded Warehouse Law.

Sec. 67-202. Terms Defined. The term "Public Warehouse" or "Warehouse" as used in this chapter shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural produce is received for storage or transfer; such warehouses are hereby declared to be public utilities.

The term "agricultural product" wherever used in this chapter shall be deemed to mean grains, dry peas, dry beans, leguminous seeds, hay, potatoes, fruit, honey, eggs, dried, canned or preserved fruit, canned vegetables, canned fish, meat, poultry, dairy products, wool and feeds (not including minerals) or any of them.

The term "person" includes a corporation or partnership or two or more persons having a joint or common interest.

The term "warehouseman" means a person operating or controlling a public warehouse.

The term "receipt" means a warehouse receipt.

Sec. 67-203. Licenses Necessary to Operate Public Warehouse and/or Weigh and Grade Agricultural Produce. Before a person can lawfully operate a public warehouse and/or weigh and grade agricultural produce in this state, he must procure licenses under this chapter; *provided, however, that the foregoing requirement as to li-*

censes is not applicable to any warehouse or warehouseman who is licensed under an Act of Congress approved August 11, 1916 (39 Statutes at Large 44) and Acts amendatory thereof, commonly called the "United States Warehouse Act," but licenses issued pursuant to said laws of the United States shall be taken and considered as a full compliance with the provisions of this chapter relative to faithful performance of the obligations of such warehouseman.

Sec. 67-204. Penalty for Operating Without License. Any person operating a public warehouse without a license shall forfeit to the state for each day's operation fifty dollars, and such operation may be enjoined upon complaint of the commissioner of agriculture.

Sec. 67-205. Inspection and Classification of Warehouses, Storage, Warehousing, Weighing and Certification of Products. Duties of warehousemen. Upon application by any person for license to conduct a warehouse under this chapter, the department of agriculture is authorized to investigate and determine whether the warehouse for which licenses are applied, or have been previously issued, under this chapter, are suitable for the proper storage of agricultural products, and the Department of agriculture is authorized with or without application, to wit:

To inspect any warehouse licensed under this chapter; to investigate the storage, warehousing, classifying according to grade, and otherwise weighing and certification of agricultural products therein conducted; to classify warehouses, licensed or applying for license, in accordance with their ownership, location, surroundings, capacity, conditions and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this chapter; and to prescribe, within the limitations of this chapter, the duties of the warehousemen conducting ware-

houses licensed under this chapter with respect to their care of and responsibility for agricultural products.

Sec. 67-206. Licenses to Warehousemen—Issue—Conditions Precedent. The department of agriculture is authorized, upon application to it, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this chapter and such rules and regulations as may be made hereunder; provided, that each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license to comply with and abide by all the terms of this chapter and the rules and regulations prescribed hereunder.

Sec. 67-207. Term of License—Renewal. Each license issued under Section 67-206 and Section 67-215 shall be issued for a period not exceeding one year. All licenses shall terminate on June thirtieth following their issuance.

Sec. 67-208. Bond of Applicant for License—Additional Bond. Each warehouseman applying for a license to conduct a warehouse in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the department of agriculture a good and sufficient bond other than personal security to the state to secure the faithful performance of his obligations as a warehouseman under all the laws of the state, and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department of agriculture may prescribe to carry out the purpose of this chapter, including the requirements of fire insurance.

Whenever the department of agriculture shall determine that a bond approved by it is, (sic) for any cause has become, insufficient, it may require an additional bond or bonds to be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked: provided, that the foregoing requirement as to bond shall not be applicable to any warehouse or warehouseman who has given a bond as required by an act of Congress approved August 11, 1916 (39 U. S., at L. 446), and acts amendatory thereof, commonly called the United States Warehouse Act, but that bonds given pursuant to said laws of the United States shall be taken and considered as a full compliance with the provisions of this chapter relative to security for the faithful performance of the obligations of such warehouseman.

Sec. 67-209. Action on Bond by Persons Injured. Any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Section 67-208, shall be entitled to sue on the bond in his own name in a court of competent jurisdiction to recover the damages he may have sustained by such breach; provided, that the liability of the surety upon the bond required to be given by Warehousemen as provided in Section 67-208 of this chapter, shall be limited to the amount specified in the bond, and in case of recoveries had by two or more persons for violation of the conditions of such bond in excess of the amount of the bond, such recovery shall be prorated and the total recovery as against the surety shall not exceed the amount of the bond.

Sec. 67-210. Designation of Warehouse as Bonded Warehouse. Upon the filing with and approval by the department of agriculture a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse

shall be designated as bonded under this chapter, and no name or description conveying the impression that it is so bonded, shall be used until a bond, such as provided for in Section 67-208, has been filed with and approved by the department of agriculture, of this state or of the United States, and if such bond has been filed with and approved by the department of agriculture of the United States, until satisfactory proof thereof be filed in the department of agriculture of this state, nor unless the license issued under this chapter for the conduct of such warehouse remains unsuspended and unrevoked.

Sec. 67-211. Fees of Department. The Department of Agriculture may charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this chapter and a fee not exceeding ten dollars per annum for each warehouse license or renewal thereof and a fee not exceeding two dollars and fifty cents for each weigher and grader license or renewal thereof issued to a warehouseman under this chapter. All such fees shall be deposited and covered into the State Treasury, and credited to the Agricultural Department Inspection Fund.

Sec. 67-212. Schedule of Rates—Posting. Every public warehouseman shall charge without discrimination the handling and storage rate that is fixed by the Public Utilities Commission and may collect such charges as of July first following date of delivery. Every public warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in his warehouse, a schedule of storage and handling rates for the ensuing year, which schedule shall be kept posted in a conspicuous place in said warehouse. Further, the warehouseman shall annually, during the first week in July, mail to the Department of Agriculture, a copy of such rates.

Sec. 67-213. Privilege of Examining Products Stored.

Every person having an interest in any agricultural product stored in any such warehouse, and every state inspector, shall have the right to examine at all times during ordinary business hours any product so stored, and all parts of such warehouses, provided warehouse or the agricultural products stored therein is not endangered by such inspection; and every warehouseman, his agent and servants shall furnish proper facilities for such examination.

Sec. 67-214. Employment of Inspectors. The department of agriculture may employ such inspectors, samplers and weighers as it may deem necessary.

Sec. 67-215. Licenses to Classify, Grade or Weigh Products for Storage. The department of agriculture may, upon presentation of satisfactory proof of competency, issue to any person a license to classify any agricultural product or products, stored or to be stored in a warehouse licensed under this chapter, according to grade or otherwise and to certificate the grade or other class thereof, or to weigh the same and to certificate the weight thereof, or both to classify and weigh the same and to certificate the grade or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this chapter and of the rules and regulations prescribed hereunder so far as the same relate to him, and execute a sufficient bond to the State of Idaho in sum determined by the department of agriculture for the faithful discharge of his duties.

Sec. 67-216. Suspension or Revocation of License to Classify, Grade or Weigh Products for Storage. Any license issued to any person to classify or to weigh any agricultural product or products under this chapter may be suspended or revoked by the department of agriculture whenever it is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has

failed to classify or to weigh any agricultural product or products correctly, or has violated any of the provisions of this chapter, or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatsoever. Pending investigation, the department of agriculture, whenever it deems necessary, may suspend a license temporarily without hearing.

Sec. 67-217. Fees for Inspection. The department shall fix the fees for the inspection and weighing of agricultural products, such fees to be lien upon such products.

Sec. 67-218. Warehousemen to Receive Products Without Discrimination. Every warehouseman conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him, bearing certificate, when required, of an official inspector showing suitable condition, for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse faciilties.

Sec. 67-219. Products for Storage Deemed Deposited Subject to Law. Any person who deposits agricultural products for storage in a warehouse licensed under this chapter shall be deemed to have deposited the same subject to the terms of this chapter and the rules and regulations prescribed hereunder.

Sec. 67-220. Inspection and Grading of Fungible Diseased of Insect Infested Products. Any fungible diseased or insert infected agricultural product complained of by any person having interest in the warehouse or agricultural products stored in a warehouse licensed under this chapter shall be inspected and graded by a representative

of the department of agriculture or a person duly licensed to grade the same under this chapter, and if such inspection or grading shows such agricultural product to be in condition that its continued storing or retention would injure or damage the warehouse or other products stored therein the owner shall, by order of the inspector, forthwith remove such agricultural product. Providing the owner of such product is unknown to the inspector or warehouseman, the warehouseman shall proceed to remove or make disposition of such product in a manner that will tend to save and realize the values contained in such product by the owner, under such rules and regulations as may be prescribed under this chapter.

Sec. 67-221. Fungible Products of Different Grades to be Kept Separate. Every warehouseman conducting a warehouse licensed under this chapter shall at no time while they are in his custody mix fungible agricultural products of different grades.

Sec. 67-222. Receipt for Products Stored. For all agricultural products stored in a warehouse licensed under this chapter original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

Sec. 67-223. Receipts for Products Stored—Contents. Every receipt issued for agricultural products stored in a warehouse licensed under this chapter shall embody within its written or printed terms:

1. All the requirements of a receipt under the uniform warehouse receipts law.

2. A description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers,

or other means of identification and the weight of such bales or packages.

3. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: provided, that such grade or other class shall be stated according to the official standards of the state applicable to such agricultural products as the same may be fixed and promulgated under authority of law: provided further that until such official standards of the state for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard; provided, that unless otherwise required by law, when requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with this subdivision may be issued if it has plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not graded.

4. A statement that the receipt is issued subject to the State Bonded Warehouse Act and the rules and regulations prescribed thereunder.

5. Such other terms and conditions within the limitations of this chapter as may be required by the Department of Agriculture.

6. All "warehouse receipts" issued under the provisions of this chapter, shall be upon forms prepared and supplied by the Department of Agriculture and issued upon requisition of the warehouseman at a reasonable cost.

Sec. 67-224. Standards for Agricultural Products. The department of agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products in this chapter defined by which their quality or value may be judged or determined.

So far as practicable such standards shall conform to the official standards of the United States applicable to such agricultural products as the same may from time to time be fixed and promulgated.

No warehouseman in this state shall insert in any receipt issued by him any language in anywise limiting or modifying his liabilities, or responsibilities, as imposed by the laws of this state.

Sec. 67-225. Loss of Receipts—Conditions of Reissue. While an original receipt issued under this chapter is outstanding and uncancelled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursant to this chapter.

Sec. 67-226. Records of Products Stored—Reports—Conduct of Warehouses. Every warehouseman conducting a warehouse licensed under this chapter shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the department of agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as it may require, and shall conduct said warehouse in all other respects in compliance with this charter and the rules and regulations made hereunder.

Sec. 67-227. Examination of Products Stored—Publication of Findings. The department of agriculture is

authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this chapter. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this chapter and the rules and regulations made hereunder, the department may publish its findings.

Sec. 67-228. Suspension or Revocation of Warehouseman's License. The department of agriculture may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to any warehouseman conducting a warehouse under this chapter, for any violation of or failure to comply with any provision of this chapter or of the rules and regulations made hereunder or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation the department of agriculture, whenever it deems necessary, may suspend a license temporarily without hearing.

Sec. 67-229. Publication of Reports. Names and Locations of Warehouses. The department of agriculture from time to time may publish the results of any investigation made under this chapter; and it shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this chapter and a list of all licenses terminated under this chapter and the causes therefor.

Sec. 67-230. Examination of Books. The department of agriculture is authorized through officials, employees, or agents of the department designated by it, to examine all books, records, papers, and accounts of warehouses relating thereto.

Sec. 67-231. Rules and Regulations. The department

of agriculture shall from time to time make such rules and regulations as it may deem necessary for the efficient execution of the provisions of this chapter.

Sec. 67-232. Cooperation. In the administration of this chapter the department is directed to cooperate with the state seed commissioner, with the federal departments and with official agencies in other states.

Sec. 67-233. Violation of Law—Penalty. Every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the department of agriculture under this chapter, or who shall violate or fail to comply with any provision of Section 67-208, or who shall violate or fail to comply with any of the provisions of Section 67-212, or who shall alter, forge, simulate, counterfeit, violate or fail to comply with Section 67-233, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $50.00 nor more than $300.00, or imprisoned not more than six months, or both fine and imprisonment, in the discretion of the court.

Sec. 67-234. Rent of Quarters—Employment of Assistants. The department is authorized to rent such quarters and to employ such persons and means as it may deem necessary in the city of Boise and elsewhere, and it is authorized, in its discretion, to employ qualified persons not regularly in the service of the state for temporary assistance in carrying out the purposes of this chapter.

Sec. 67-235. Effect of Partial Invalidity of Law. If any clause, sentence, paragraph, or part of this chapter shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Supreme Court of the United States

October Term, 1955

No. 205

WILLIAM E. BANKS WAREHOUSES, INC. and JOHN ALFRED HALFORD,

Petitioners,

vs.

GEORGE L. WATT; WILLIAM WATT; ROLAND ULRICH; C. J. DeVISSER; MARIE DeVISSER, and C. J. DeVISSER, as Admr. W.W.A. of EST. of A. W. DeVISSER, Dec'd; FRED TRAUTWEIN; HARRY VAN GILDER; CHARLES SACH; FRED INGRAHAM; CLYDE BACON, INC.; L. A. HARDY; FRED C. [illegible]; RUDY BONADIMAN; ALBERT ASSON; MARIE [illegible] DALEY; ELSO R. CHUGG; CASPER G. [illegible]; HERSCHEL BARNES; ELMORE LOVELAND; WAYNE F. GARRARD; PARKER & SULLIVAN; D. P. PARKER & KEITH PARKER; J. S. PARKER; JACK F. CHURCH; A. R. McCUISTON; JAKE KISSEE; C. C. CLARK; GUILIO MENAPACE; JOHN MARTICH; JOHN WINN; VIVIAN WHIPPLE; ALVIN BROWN; MRS. MINNIE STEWART; ROBERT GERARDELLI; E. R. TURNER; HENRY MANNING; LELAND J. GARNER; OTTO JOHNSON; L. L. SPEVAK; W. G. [illegible], Admr. of EST. of VIOLA FRIZELL, Dec'd; J. M. JAMERSON; HAROLD R. MALONE and OLGA MALONE; D. C. PIERCE; EDWARD R. BABCOCK; HYPOTHERMAL LAND COMPANY; and FRED R. MATHEWS,

Respondents.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS IN OPPOSITION

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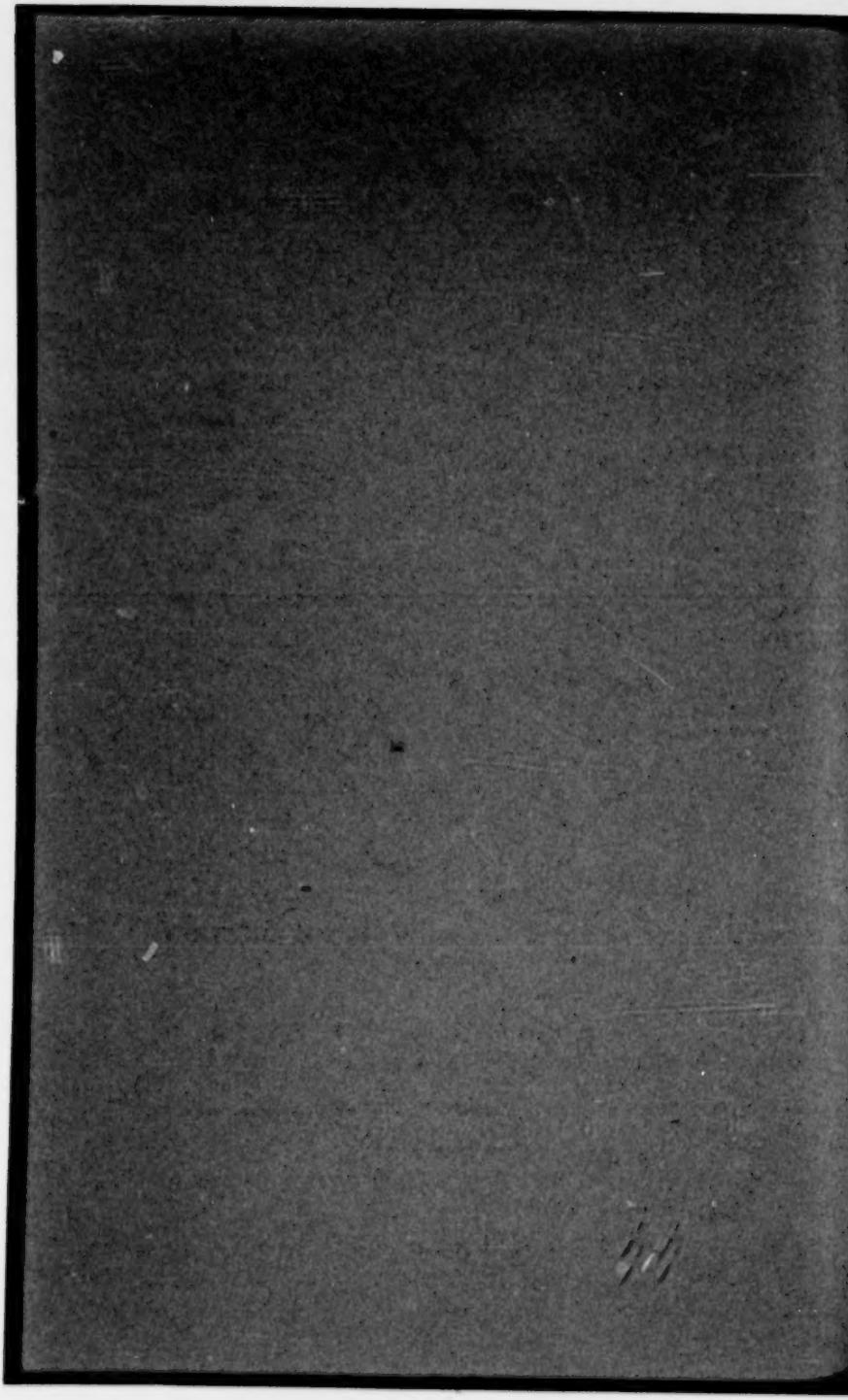

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In The

Supreme Court of the United States

October Term, 1952

No. 266

WILLIAM H. BANKS WAREHOUSES, INC. and JOHN ALFRED HALFORD,

Petitioners,

vs.

GEORGE L. WATT; WILLIAM WATT; ROLAND ULRICH; C. J. DeVISSER; MARIE DeVISSER. and C. J. DeVISSER, as Admr. W.W.A. of EST. of A. W. DeVISSER, Dec'd; FRED TRAUTWEIN; HARRY VAN GILDER; CHARLES ZACH; FRED INGRAHAM; CLYDE BACON, INC.; L. A. HARDY; FRED C. ROGERS; RUDY BONADIMAN; ALBERT ASSON; MARIO L. DALRY; ELZO R. CHUGG; CASPER G. BAGNELL; HERSCHEL BARNES; ELMORE LOVELAND; WAYNE F. GARRARD; PARKER & SULLIVAN; D. F. PARKER & KEITH PARKER; J. S. PARKER; JACK F. CHURCH; A. R. McCUISTON; JAKE KERBS; C. C. CLARK; GUILIO MENAPACE; JOHN MARTSCH; JOHN WINN; VIVIAN WHIPPLE; ALVIN BROWN; MRS. MINNIE STEWART; ROBERT GIRARDELL; R. B. TURNER; HENRY MANNING; LELAND J. GARNER; OTTO JOHNSON; L. L. SPEVAK; W. G. SWIM. Admr. of EST. of VIOLA FRIZELL, Dec'd; J. M. JAMERSON; HAROLD B. MALONE and OLGA MALONE; D. C. PIERCE; EDWARD E. BABCOCK; HYPOTHEEK LAND COMPANY; and FRED R. MATHERS,

Respondents.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Idaho (R. 233-270) is reported

in 96 F. Supp. 731. The opinion of the Court of Appeals (R. 678) is reported in 196 F. 2d 1018.

JURISDICTION

The Court of Appeals' judgment was entered May 15, 1952 (R. 679). Petition for Rehearing was denied June 19, 1952 (R. 697). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

1. Is a United States District Court bound by a decision of a state court, when the jurisdiction of the state court is invoked by the same parties who have previously submitted the entire matter to the jurisdiction of that United States District Court upon a complaint for declaratory judgment, and when those affected were not made parties to the action in the state court?

2. Does a litigant have the right to require all of the judges of the Court of Appeals to pass upon a petition for rehearing?

STATEMENT

The opinion of the District Court (R. 233-270) and the Findings of Fact (R. 309-343) contain complete statements of the case; however, the only facts involved which are necessary for the consideration of the questions presented are the following:

During the time involved in this cause, the Idaho Bonded Warehouse Law was in effect. This law is set forth in Appendix D of the Petition herein be-

ginning at page 49. No purpose would be served by repeating it in this brief.

William H. Banks Warehouses, Inc., (hereinafter called "Banks") leased warehouse buildings in Filer and Rupert, Idaho, from W. Andrew Jean (Exs. 15, 16 & 17, R. 505, 235[1]). Banks also applied to the Department of Agriculture of the State of Idaho (hereinafter called "Department") for licenses to operate public warehouses in these buildings under the Idaho Bonded Warehouse Law, (Ex. 9, R. 497, 316, 317; Ex. 10 R. 498, 241-244). Banks also deposited with the Department, as its warehouseman's bond and in compliance with Section 67-208 of the Idaho Bonded Warehouse Law (Petition p. 51, R. 7), the Lloyd's Policy (Ex. 41, R. 561, 562, 240).

Licenses were issued to Banks to operate these warehouses as public warehouses for the periods shown on the licenses (Ex. 8, R. 498, 238-239; Exs. 11 & 12, R. 498, 245, 246). Public warehouses for the storage of agricultural produce were operated in each of these buildings (R. 516, 579, 581-582, 603, 607).

The judgment herein is in favor of the owners of dry beans who deposited their beans in these warehouses. The beans were disposed of without the owners' consent and the owners have not been paid therefor (R. 556-558).

1. As stated by petitioners, the original exhibits were not printed. Record references are to pages of the Transcript where the exhibit was received in evidence followed by references to pages where all or a portion of the exhibit appears.

Petitioners, on July 6, 1948, (Petition p. 4) commenced a declaratory judgment action in the United States District Court for the District of Idaho against respondents asking that it be determined that petitioners were not liable to respondents for the value of beans delivered (R. 3). On July 20, 1948 (Petition pp. 10,28), after petitioners had invoked the jurisdiction of the United States District Court, they petitioned an Idaho state court for a writ of mandate to require the Commissioner of Agriculture of the State of Idaho to amend certain of the licenses previously issued. None of the respondents were parties to this mandamus action (Finding XXIII, R. 331-332). The writ of mandate was issued by the state court ordering the licenses amended by changing the name designation only of the warehouses. (Ex. 33, R. 555). Petitioners' primary complaint is the holding that these amendments are not binding upon respondents.

SUMMARY OF ARGUMENT

1. The District Court Properly Held That the Writ of Mandate Issued by the Idaho State Court and the Amendments to the Licenses Pursuant to the Writ Could Not Affect the Rights of Respondents Herein.
   (a) The subject matter of the action had already been submitted to the jurisdiction of the United States District Court.
   (b) None of the Respondents were parties to the action in the State Court.

(c) The wording of the licenses is immaterial.

2. The Petition for Rehearing was Properly Denied.
   (a) The decision does not conflict with others of the Ninth Circuit.
   (b) Rehearings are discretionary and not a matter of right.

ARGUMENT

1. The District Court Properly Held That the Writ of Mandate Issued by the Idaho State Court and the Amendments to the Licenses Pursuant to the Writ Could not Affect the Rights of Respondent Herein.

(a) The subject matter of the action had already been submitted to the juridiction of the United States District Court.

By filing their Complaint for Delaratory Judgment (R. 3-18) on June 6, 1948, petitioners invoked the jurisdiction of the United States District Court for the District of Idaho, and by the allegations of this Complaint submitted the entire subject matter to the jurisdiction of that Court. Included in the subject matter submitted, were all questions concerning the liability of petitioners under the licenses (R. 8, 14). These licenses were then made the subject matter of the petition for writ of mandate filed by petitioners in the Idaho state court against the Commissioner of Agriculture on June 20, 1948.

Contrary to the statements contained in the Petition, the subject matter of the action brought in the state court involved neither the construction of

a state statute nor a determination of the powers of a state administrative officer. Only a question of fact, i.e. whether an error had been committed in the wording of the licenses, was involved. This is clearly shown by the Opinion, Findings of Fact and Conclusions of Law, and Judgment of the state court. (Petition, Appendix A, pp. 25-39). Hence, this is not a situation in which there is any encroachment upon any field reserved to the state courts, and the authorities cited on page 18 of the Petition do not apply here.

Having invoked the jurisdiction of the United States District Court with the request for the broad remedy of a declaratory judgment, petitioners had no right to limit the Court's action upon the subject matter by petition in the state court, and the state court was without jurisdiction to issue the writ of mandate and attempt to interfere with the United States District Court's disposition of the subject matter previously submitted to it. *Looney* v. *Eastern Texas R. Co.*, 247 U. S. 214, 220; *Ex parte Chetwood*, 165 U. S. 443, 460; *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 737.

(b) None of the respondents were parties to the action in the State Court.

Since none of the respondents were made parties or were in privity with parties to the action brought in the state court, they cannot be bound by its judgment. The District Court would have erred had it ruled that the judgment of the state court could af-

fect the rights of respondents here. This is the rule generally, as shown in 30 American Jurisprudence, Judgments, Sec. 220, p. 951, and in 50 Corpus Juris Secundum, Judgments, Sec. 821, p. 385, and has been followed in Idaho. *Ada County* v. *Bottolfsen*, 61 Idaho 64, 72; 97 P. 2d 599, 602; *Carrington* v. *Crandall*, 65 Idaho 525, 533; 147 P. 2d 1009, 1012.

(c) The wording of the licenses is immaterial.

The action in the state court was not commenced until after the expiration of the license year and long after the beans of the respondents had been converted.

In spite of any changed wording in the licenses, the following facts are apparent:

(1) Banks made application for a license to conduct a public warehouse in each of these particular warehouses.

(2) Regardless of the designation of the warehouses, the licenses related to and authorized public warehouses to be conducted in these particular buildings designated as State Warehouse No. 537, at Filer, and State Warehouse No. 575, at Rupert. (Ex. 11 & 12; R. 498, 245, 246, 8, 14).

(3) Public warehouses were, in fact, operated in each of these warehouses (R. 516, 579, 581-582, 603, 607; Sec. 67-202, Idaho Bonded Warehouse Law Petition, Appendix D, p. 49).

(4) Beans of respondents were deposited in these warehouses and converted; respondents have

not been paid any part of the value of their beans (R. 556-558).

(4) Without the action of Banks in making applications for these licenses and in depositing its warehouseman's bond, neither of these warehouses would have been operating (R. 258).

Under these facts no amendment or change made in either of the licenses could in any way affect or defeat the right of respondents to recover from Banks and its bondsmen.

Petitioners misconstrue the basis of the District Court's decision and attempt to limit it to the language of the licenses themselves. That this is not the basis of the District Court's opinion, which was adopted by the Court of Appeals in its entirety, is apparent from reading the opinion itself (R. 233-270). The grounds upon which liability has been imposed upon petitioners is succinctly stated at pages 257-261 of the Transcript of Record, and could be summarized as being to the effect that anyone whose actions induce the opening of a warehouse for the storage of agricultural produce, as was done here, is, under the Idaho Bonded Warehouse Law, liable to the owners of the produce in the event of a conversion.

2. The Petition for Rehearing was Properly Denied.

Concerning the disposition of the petition for rehearing by the Court of Appeals, the Petition (p. 21) asserts that the same issue is presented in this case as in *Western Pacific Railroad Corporation,*

et al v. *Western Pacific Railroad Company, et al*, October Term, 1952, No. 150 (Opinion of Court of Appeals not yet reported). Certain patent distinctions should be noted:

The petition for rehearing in banc in the *Western Pacific* case was stricken (*Western Pacific* R. 2259, 2260[2]); here it was denied (R. 697).

The division of the Court of Appeals which heard the *Western Pacific* case was divided on the merits; one district judge wrote the opinion, which was concurred in by the one circuit judge of the division; the third member, a district judge, dissented (*Western Pacific* R. 2214, 2239). This same judge dissented also from the order striking the petition for rehearing in banc and suggested a rehearing in banc (*Western Pacific* R. 2261, 2262). The division hearing the instant case was composed of three circuit judges who rendered a per curiam opinion, adopting completely the views of the trial judge (R. 678); thus, all judges hearing this case on its merits are in perfect accord. The members of the division are likewise in agreement upon the denial of the petition for rehearing (R. 697).

(a) This decision does not conflict with others of the Ninth Circuit.

Petitioners contend that the opinion in this case creates a conflict with other decisions of the Court of Appeals for the Ninth Circuit. Petitioners cite

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2. This and similar references are to pages in the Transcript of Record in the Western Pacific case, on file in this Court.

on page 21 of the Petition certain cases decided in the Ninth Circuit upholding the legality of field warehousing, and in support of their contention of conflict quote one sentence from the opinion in this case (Petition p. 22). By the extraction of this one sentence from the opinion and removing it from the context, petitioners accomplish a distortion of the holding in the opinion. Throughout this opinion, only the narrow subject of the warehousing of agricultural produce is being discussed. Only a casual reading of that portion of the opinion from which petitioners have extracted the sentence quoted reveals that it is only in this narrow field, and based upon the obvious intention of the Idaho Legislature to protect the owners of agricultural produce, that the opinion in this case restricts the operation of field warehousing (R. 263).

The contrast between the situation involved in this case and that which prompted this Court's action in the case of *U. S. ex rel Robinson v. Johnston*, 316 U. S. 649, is patent. Within a year, the Ninth Circuit considered three cases involving similar principles of law. There were *U. S. ex rel Robinson* v. *Johnston*, 118 F. 2d 998; *Waley v. Johnston*, 124 F. 2d 587; and *Crockett* v. *U. S.*, 125 F. 2d 547. In these three cases, seven judges of the Ninth Circuit had expressed contrary views on the controlling law. None of the opinions were unanimous within the division which heard them. Further conflict was created by the fact that this Court in *Waley* v. *Johns-*

ston, 316 U. S. 101, reversed the judgment of the Ninth Circuit. Thus, it is clear that within the Ninth Circuit conflicts and confusion were present on the issues involved in the *Robinson* case which demanded consideration in banc. No such conflicts or confusion are present here.

(b) Rehearings are dicretionary and not a matter of right.

In the *Western Pacific Railroad Corporation* case, all of the judges of the Ninth Circuit considered a petition for leave to file a motion denominated "Motion to Vacate Order Striking Appellant's Petition for Rehearing En Banc and Reinstating Such Petition." The opinion of the Ninth Circuit was entered on July 9, 1952, and has not yet been reported. It is, however, set forth in full as Appendix 1 of the Brief of Respondents in Opposition in that case. The majority opinion contains a clear and concise analysis of the proper position of the Circuit Court in response to a petition for rehearing in banc. From this opinion as well as the controlling statute (28 U.S.C., Sec. 46 (c)), it is apparent that the consideration of causes in banc is discretionary and is not a matter of right. This opinion further points up the fact that an impossible burden would be imposed upon the judges of the Circuits if they could be required by the mere filing of a petition for rehearing in banc to each consider the merits of every such case. This Court has held that rehearings are matters of discretion and no appeal lies from the denial or other

disposition of petitions asking rehearing. *Wayne Gas Co.* v. *Owens-Illinois Co.*, 300 U. S. 131, 137-138; *Pfister* v. *Finance Corp.*, 317 U. S. 144, 149-150.

The dispostion of the Petition for Rehearing in this case is properly controlled by the cases of *Independence Lead Mines Co.* v. *Kingsbury*, 175 F. 2d 983, 992; Certiorari denied, 338 U. S. 900; *Kronberg* v. *Hale*, 181 F. 2d 767; *Fruehauf Trailer* v. *Myers*, 181 F. 2d 1008, Certiorari denied, 340 U. S. 827, rehearing denied, 340 U. S. 885; *Northwestern Mut. Ins. Co.* v. *Gilbert*, 182 F. 2d 256 (All Ninth Circuit cases).

CONCLUSION

The decision of the Court of Appeals is correct and presents no conflict of decisions; this is a private controversy important to these litigants only. Therefore, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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FILED
SEP 13 1952
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 266

WILLIAM H. BANKS WAREHOUSES, INC., ET AL.,
Petitioners,

vs.

GEORGE L. WATT, ET AL.,
Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

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PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

QUESTIONS PRESENTED.

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1. The first question framed by Respondents completely fails to present the issues in this case, because

a. The issues involved in the state proceedings were not before the United States District Court in the declaratory judgment action.

b. The action for a writ of mandate was only the final step in the state proceedings, the initial steps of which took place before the declaratory judgment proceeding was instituted.

c. The state proceedings involved state administrative decisions which could not be collaterally attacked in the District Court action.

d. Respondents had no right to be parties in the state

proceedings and none of their "rights" were adjudicated therein.

2. The second question framed by Respondents is too broad. The issue is whether, when a litigant asks that a rehearing *en banc* be granted, such a request must be submitted to and ruled on by all the active judges of the Court.

STATEMENT.

Respondents do not dispute the correctness of the Statement in the petition. Their own Statement is misleading because it omits certain basic facts of fundamental importance. For example, Respondents state that public warehouses were operated in the warehouse buildings in question; that their produce was deposited therein; and that it was converted. No mention is made of the fact that the public warehouse business was conducted by Jean, not by Banks; that Respondents delivered their produce to Jean; and that Jean converted that produce.

ARGUMENT.

1. The District Court Exceeded Its Judicial Power by Refusing to Follow the State Law and in Holding the Amendments to the License Certificates, Made Pursuant to the State Court Judgment, Were Without Legal Effect in This Case.

The District Court based its decision on the effect of the language of the original license certificates as a matter of law, without regard to any estoppel in fact. It therefore necessarily construed the Idaho Bonded Warehouse Law as giving the Department power to issue a license to Banks "to conduct the Jean Seed Company" so that Banks, by the act of applying for a license in its own name, became immediately and retroactively bound in accordance with the terms of the certificate which subsequently issued. Only on this ground could the Court find in favor of Respondents, because there was no evidence whatsoever to support any estoppel in fact at Rupert. Since the Court did not distinguish between Rupert and Filer, its holding at Filer must be based on the same ground. When this basis of the District Court's holding is kept in mind, the arguments of Respondents are clearly irrelevant. In addition, all are erroneous.

a. The state court proceedings were in process when the declaratory judgment was filed and the issues in the former proceedings were never submitted to the District Court.

(Reply to part 1(a) of Respondents' Argument.)

Respondents and the District Court's opinion assume the state proceedings started with the filing of the action

for a writ of mandate. Actually this was the last step in the state proceedings, which started as an administrative action within the Department with the oral and written request of Banks that the Department correct the license certificates issued April 2, 1948. Both these initial acts took place in June, 1948 (App. A, Petition p. 34; Finding 11; also p. 27), prior to the filing of the declaratory judgment action on July 6, 1948. The Department refused to make the correction unless ordered to do so by a court of competent jurisdiction (Department's letter of July 13, 1948; App. A., Petition p. 35; Finding 12; also pp. 27-28), after filing of the declaratory judgment action. A writ of mandate was then applied for July 20, 1948 in the state court, because this was the only method of directly attacking the refusal of the Department since no appeal from such action was provided in the statute.

The issues involved in the state proceedings were whether or not the Department has a ministerial duty to correct the license certificates, which necessarily involved the question of whether it had power under the statute to issue the certificates in their original form. These issues just were not before the District Court in the declaratory judgment action, as a fair examination of the pleadings clearly shows.

b. The acts of the state administrative officers in granting the original license certificates and refusing to correct them could not be collaterally attacked in the declaratory judgment proceeding.

(Further reply to part 1(a) of Respondents' Argument.)

Respondents and the District Court assume that the issue of whether or not the Department acted within its powers in issuing the original license certificates could have been determined in the declaratory judgment proceeding (if the issue had been actually submitted to the Dis-

trict Court). The assumption is false because consideration of such issue by the District Court would constitute a collateral attack on the administrative decision. Collateral attack on an administrative order of this type is not permitted. *Cragin* v. *Powell*, 128 U. S. 691 (1888); *Russell* v. *Maxwell Land Grant Co.*, 158 U. S. 253 (1895) (validity of land survey made by government officers cannot be attacked in an action between private parties); *Brown County* v. *Atlantic Pipe Line* (C. C. A. 5, 1937), 91 F. (2d) 394, certiorari denied 302 U. S. 747 (1937) (order of state taxing board fixing intangible value of pipe line and apportioning values to various counties could not be collaterally attacked in an action between the pipe line owner and one of the counties); *Stanley* v. *Supervisors of Albany*, 121 U. S. 535 (1887) (taxpayer cannot attack collaterally validity of assessment in an action to recover taxes allegedly illegally declared and void).[1]

If an attempt had been made to attack the original license certificates directly in the District Court by joining the Department as a party, the Court could not properly have assumed jurisdiction of the issue, because it involved an interpretation of state law and a definition of the powers of the state officers acting thereunder. This Court has repeatedly stated that the federal courts should leave such questions to state authorities for decision. *Burford* v. *Sun Oil Co.*, 319 U. S. 315 (1943); see also *Shipman* v. *DuPre*, 339 U. S. 321 (1950); *A. F. of L.* v. *Watson*, 327 U. S. 582 (1946) and the *Pullman* and *Fieldcrest* cases discussed in the Petition at pp. 18-19.

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1. See, also, Comment entitled "Res Judicata in Administrative Law," 49 Yale L. J. 1250 (1940), where the author states, p. 1266:

> "The action of state licensing agencies has uniformly been held to be conclusive against collateral attacks. • • • No distinction has been made between errors of fact or of law in the mistaken refusal to grant the license."

c. The fact that Respondents were not parties to the state proceedings is immaterial.

(Reply to part 1(b) of Respondents' Argument.)

Respondents and the District Court imply they should have been made parties to the state proceedings because in some way their "rights" were adjudicated therein or affected thereby. But their "rights" were neither in issue nor adjudicated. Respondents were not parties to the applications for and the issuance of the original license certificates. How can they claim any greater right to be heard when the correctness of those license certificates was questioned?

The action for writ of mandate decided a question of state law, not an issue of fact. The action lies to enforce performance of a ministerial duty prescribed by law, not to decide conflicting issues of fact. The state proceedings are, therefore, the "state law" which the District Court is bound to apply. The acts of the Department, when within the authority of the statute, are in legal effect the acts of the state legislature. If they are not within that authority (and the state court here said the Department's initial acts in issuing the original license certificates were not) they are null and void. Whether Respondents were parties to the proceedings settling this question was completely immaterial.

The Respondents adopted a mistaken position as to what the state law was when they introduced the original license certificates into evidence. When the correct state law, evidenced by the state court decision and the amended license certificates, was introduced into evidence, the District Court was bound to follow it and exceeded its judicial power when it refused to do so. Respondents are in the same position as a person who relies on a statute which is later declared by this Court to be invalid. He is deprived

of all "rights" he once thought he had under the statute just as completely whether he was an actual party to the case wherein the statute was struck down or whether he never heard of that action.

d. The District Court and the Court of Appeals based their decision on the wording of the original license certificates.

(Reply to point 1(c) of Respondents' Argument.)

The short answer to Respondents' argument that "The Wording of the Licenses is Immaterial" (Respondents' Brief p. 7) is that the District Court certainly didn't think so, and neither did the Court of Appeals which adopted the District Court's opinion as its own. The District Judge felt that he had to dispose of the amended license certificates and hold Banks bound by the terms of the original certificates before he could hold Petitioners liable. He attacked this issue first, and devoted nine pages of his opinion (R. 241-250) to setting forth all the applications, certificates and the amendments, all leading up to his conclusion (R. 250) that:

> "The bean growers (Respondents) had a right to rely on, and Banks was bound by, the licenses as they were before amendment".

Since admittedly none of Respondents saw the original license certificates and they were issued long after Respondents delivered their beans to Jean at the warehouses, this reasoning is fruitless unless it means that Petitioners had a right to rely on, and Banks was bound by, the legal effect of the original language. The Courts' conclusion on this point is the foundation of the whole opinion, as demonstrated in the Petition, pp. 14-20.

The license applications (Ex. 10, R. 498; Finding XVII, XXI, R. 323, 327) show that the particular warehouses in

question were in no way mentioned therein, as Respondents imply in subpoint (1) of point 1(c) of their Argument (Respondents' Brief p. 7). Subpoints (3) and (4) fail to state that the public warehouses were in fact operated by Jean, not by Banks, that Respondents delivered their produce to Jean and that Jean converted their produce. Subpoint (2) has no significance unless it assumes that a person who applies for and receives a license is legally bound to exercise the privileges of the license. The law is otherwise—nor is the fact that a party has a license to do an act evidence that he has actually done that act. *City of Chicago* v. *Gall*, 195 Ill. App. 41 at 46 (1st District, 1915) (not reported in Northeastern Reporter).

Subpoint (4) assumes that the Bonded Warehouse Law is strictly enforced in Idaho and that no warehousemen are permitted to operate unless they have licenses. This presumption is not justified on the record, which shows Jean had no license and made no application for a license at Filer from and after July 1, 1946, but that he continued to operate his business there after that date in the same manner as it was operated before (Finding VIII, R. 314; Stubblefield, R. 564, 566). Even if Respondents' position that Banks' license of September 27, 1946 covered Jean is correct (which Petitioners deny), there was no license or application for any license in any way connected with this warehouse from July 1 to September 25, a period which includes part of the all-important harvest season. Also, Jean opened his warehouse at Rupert about May 28, 1947. He never applied for a license, but received produce there from then on. Again, even if Respondents' position that Banks' application of August 24, 1947 covered Jean is correct (which Petitioners deny), there was still a substantial period of time when the warehouse was operated with no license of any kind in being or applied for, and no license of any kind was in being prior to April 2, 1948.

All these circumstances should have been observed by the Department's inspector who lived in Filer and visited the warehouse there (Moffatt, R. 552; Stubblefield, R. 568).

The statement in the last paragraph of point 1(c) on page 8 of Respondents' Brief is a misconstruction of the District Court's opinion. The Court properly interpreted the statute as imposing liability only on a "warehouseman" which was defined therein as a person who "operated" or "controlled" a warehouse, not anyone "whose actions induced the opening of a warehouse". But in order to hold Banks the "warehouseman" at the warehouses here involved, the Court relied on its interpretation of the legal effect of the original license certificates and the Department's powers, under the statute, to issue such license certificates. In so doing, it ignored the state law and thereby exceeded its judicial powers. The decision represents a grave and flagrant departure from a fundamental principle of federal-state relationship that is not open to argument; namely that a federal court must follow a state court's interpretation of its own state statutes.

2. The Petition for Rehearing Addressed to All Judges of the Court of Appeals, Asking That a Rehearing En Banc Be Granted, Could Not Be Properly Denied by a Division of That Court.

The Court of Appeals in the *Western Pacific Co.*[2] case announced that thenceforth, all petitions for rehearing *en banc* would be treated as if addressed only to the division originally hearing the case. This rule was apparently applied in the instant case and the net effect of its application is the same as if the petition for rehearing *en banc* were stricken, as it was in the *Western Pacific* case.

2. Court of Appeals opinion not yet reported. Petition for certiorari filed United States Supreme Court, October Term, 1952, No. 150.

Attention is called to the supplement to Judge Denman's dissenting opinion in the *Western Pacific* case, where it is shown that in the Court of Appeals for the District of Columbia all the judges consider and rule on a request for a rehearing *en banc*. The diversity in practice in the several Circuits invites a definitive ruling by this Court.

The attempt of Respondents to limit the prohibition of the District Court's decision to field warehousing of agricultural produce may be a plausible argument, but neither the District Court nor the Court of Appeals so limited the decision and until the matter is settled by a later case, state and national banks and other lending institutions in Idaho may be understandably reluctant to grant loans on the security of field warehouse company receipts. The conflict is real—and is a good illustration of the confusion in state law which is created when federal courts attempt to interpret it in piecemeal fashion. The entire bench of the Court of Appeals should have the opportunity to consider whether the confusion should be eliminated at the Ninth Circuit level.

Conclusion.

It is respectfully submitted that the petition for certiorari should be granted.

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